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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 398 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

PARESHBHAI ALIAS MANISHKUMAR HASMUKHBHAI TALASIYA

Versus

DISTRIC MAGISTRATE AND DISTRICT SUPPLY OFFICER

Appearance:

MR ANIL S DAVE for Petitioner
MS PUNANI AGP for Respondent No. 1, 4
MR BHARAT T RAO for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/06/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner before this court challenges the order of preventive detention dated 1st January, 1999, made against him by the District Magistrate, Surat, under

the powers conferred upon him under sub-section (2) (a) of section 3 of Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980, (hereinafter referred to as 'the Act').

The only ground on which the order of detention is challenged is the lethargy of the respondent authorities in not considering the representation made by the petitioner on 18th January, 1999. It is contended that on 18th January, 1999, the petitioner made a representation through his learned advocate to the State Government and the Central Government. The said representation was not attended to with promptitude by the State Government as was expected and was not decided until 19th March, 1999. Mr. Dave, the learned advocate appearing for the petitioner has relied upon the judgments of the Supreme Court in the matters of RAJAMMAL VS STATE OF TAMIL NADU & ANR (AIR 1999, SC 684), and of S.M.JAHUBAR SATHIK VS STATE OF TAMIL NADU & ORS (JT 1999 (3) 113). In the matter of Rajammal (supra), the Hon'ble court has held that, "if delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner ". In the matter of S.M.Jahubar (supra) also, the Hon'ble court held that undue delay in disposing of the representation would vitiate the order of detention. On perusal of the record, the court found that clarification sought by the Central Government were not relevant or necessary for deciding the representation. Under the circumstances, the court held that it could not be said that the representation was disposed of with promptitude.

In the present case also, one Shri A.L.Makhijani, Under Secretary to the Government of India in the Department of Consumer Affairs, Ministry of Food and Consumer Affairs has made an affidavit, and has dealt with the contentions with all the relevant dates. It appears that though the representation and the remarks of the State Government were received by the concerned section of the Department on 1st February, 1999 and on 3rd February, 1999, further details were sought for, which were received on 15th February, 1999 after sending a reminder on 12th February, 1999. Once again further details were sought for on 23rd February, 1999, and were received on 16th March 1999 after sending a reminder on 12th March, 1999. Same was received by the concerned section on 17th March, 1999 and the representation was

decided on 19th March, 1999. Mr. Rao has, therefore, vehemently argued that the Department has closely followed the representation and upon receiving the necessary material, has immediately decided the same.

However, I am unable to agree with the contentions raised by Mr. Rao. The affidavit does not disclose the nature of the further details sought from the State Government, whether the said details were relevant and germane or necessary for deciding the representation. Besides, though the details furnished by the State Government were received on 15th February, 1999, it does not appear to have been processed till 23rd February, 1999. The affidavit does not explain how the representation was dealt with after 15th February, 1999 till 23rd February, 1999. It, therefore, can not be said that the Central Government had closely followed the representation and had decided the same with utmost promptitude. On the contrary, to me, it appears that the representation was not attended to for several days between 15th February, 1999, and 23rd February, 1999. This period having not been explained, in view of the above referred two judgments of the Supreme Court, the order of detention can not be permitted to operate further.

In above view of the matter, this petition succeeds. The impugned order of detention dated 1st January, 1999 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless required in some other case, be released forthwith.

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JOSHI